

## Message Text

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C O N F I D E N T I A L STATE 159277

EXDIS USMTN FOR CULBERT ONLY

E.O. 11652: GDS

TAGS: EEWT, US, HU

SUBJECT: TECHNICAL TRADE TALKS WITH HUNGARY

1. SUMMARY: SENIOR HUNGARIAN TRADE NEGOTIATOR JANOS NYERGES HELD INFORMAL TALKS ON TRADE ISSUES JUNE 27-29 WITH WASHINGTON OFFICIALS LED BY STATE DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL TRADE POLICY WILLIAM BARRACLOUGH AND ASSISTANT SPECIAL TRADE REPRESENTATIVE GEZA FEKETEKUTY. TALKS ILLUMINATED SEVERAL DIFFICULT BUT APPARENTLY SOLUBLE PROBLEMS RELATED TO DIFFERENCES BETWEEN REQUIREMENTS OF THE TRADE ACT OF 1974 AND HUNGARY'S RIGHTS AND OBLIGATIONS UNDER THE GATT.

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DELEGATIONS ALSO EXCHANGED VIEWS ON ISSUES IN THE MULTI-LATERAL TRADE NEGOTIATIONS. NYERGES VISIT WAS MOST PRODUCTIVE AND COULD REPRESENT FIRST STEP TOWARD NEGOTIA-

TION OF A TRADE AGREEMENT WITH HUNGARY. OTHER ASPECTS OF TALKS COVERED SEPTELS. BRIEFING MATERIALS USED IN TALKS HAVE BEEN POUCHED TO BUDAPEST. END SUMMARY.

2. TONE OF TALKS: TALKS WERE FRIENDLY AND BUSINESSLIKE,

BUT MARKED BY FRANKNESS. EACH SIDE WAS CAREFUL NOT TO

STAKE OUT FIRM BARGAINING POSITIONS, BUT AREAS OF DIFFICULTY WERE HIGHLIGHTED. NYERGES RETURNED FREQUENTLY TO THREE THEMES: SANCTITY OF HUNGARIAN PROTOCOL OF ACCESSION AND DESIRABILITY OF US DISINVOKING ARTICLE 35; FOOLISHNESS OF APPROACHING NONMARKET COUNTRIES AS A BLOC SYSTEMICALLY INCAPABLE OF OPERATING UNDER INTERNATIONAL TRADING RULES; AND PERFIDY OF EUROPEAN COMMUNITIES. US SIDE STRESSED DESIRE TO DEAL WITH PRACTICAL PROBLEMS WITHOUT REFERENCE TO THEIR SOURCE IN NONMARKET ECONOMIES, AND TO ADHERE AS CLOSELY TO GATT AS POSSIBLE IN ANY FUTURE RELATIONSHIP WITH HUNGARY, WITHOUT CREATING INCONSISTENCIES WITH DOMESTIC LAW.

3. TRADE ACT, GATT, AND ARTICLE 35: AT TIME OF HUNGARIAN ACCESSION TO GATT, US LAW PROHIBITED TARIFF NEGOTIATIONS WITH OR EXTENSION OF MFN TO A COMMUNIST COUNTRY. US THEREFORE INVOKED GATT ARTICLE 35, WHICH PERMITS A GATT CONTRACTING PARTY (CP) TO DECLINE TO APPLY GATT PROVISIONS IN ITS RELATIONS WITH A NEW CP. ONCE DISINVOKED, ARTICLE 35 CANNOT BE REINVOKED.

US SIDE EXPLAINED EXTENSION OF MFN REQUIRES BILATERAL  
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AGREEMENT, AND THAT DISINVOCATION WOULD BE IMPOSSIBLE, EVEN AFTER CONCLUSION OF A TRADE AGREEMENT, SO LONG AS IT WOULD CREATE CONFLICT BETWEEN GATT OBLIGATIONS AND DOMESTIC LAW.

NYERGES SAID DISINVOCATION WAS IMPORTANT AS A VISIBLE GUARANTEE THAT U.S. AUTHORITIES WILL TREAT ALL TRADE QUESTIONS REASONABLY, AND IN CONFORMITY WITH GATT OBLIGATIONS. NEVERTHELESS, HE DID NOT INSIST ON DISINVOCATION, BUT DID INSIST THAT A TRADE AGREEMENT IN NO WAY DIMINISH THE RIGHTS HUNGARY SECURED THROUGH ACCESSION TO GATT, OR WEAKEN HUNGARY'S POSITION VIS-A-VIS THE EC. HE REFERRED FREQUENTLY TO EXTENSIVE US PARTICIPATION IN GATT WORKING PARTY ON HUNGARIAN ACCESSION, CLAIMING THAT US HAD ACCEPTED HUNGARY'S PROTOCOL, RESERVING ONLY ON SCHEDULE OF CONCESSIONS.

BOTH SIDES AGREED THAT IN AREAS OF GREATEST DIFFICULTY -- DURATION AND TERMINATION OF MFN, AND MARKET DISRUPTION -- A TRADE AGREEMENT WOULD REQUIRE VERY CAREFUL WORDING TO MEET BOTH HUNGARIAN AND US REQUIREMENTS.

4. DURATION AND TERMINATION OF MFN: BOTH SIDES RECOGNIZED THAT IF A TRADE AGREEMENT WERE CONCLUDED UNDER A JACKSON-VANIK WAIVER, DISINVOCATION OF ARTICLE 35 WOULD

NOT BE POSSIBLE. (FYI. US CONTINUES TO INVOKE ARTICLE

35 WITH RESPECT TO ROMANIA.) US SIDE EXPLAINED THAT ASIDE FROM JACKSON-VANIK, THE TRADE ACT LIMITS THE VALIDITY OF A BILATERAL TRADE AGREEMENT TO AN INITIAL THREE-YEAR PERIOD, WITH RENEWAL FOR SUBSEQUENT THREE-YEAR PERIODS, SUBJECT TO TWO CONDITIONS:

(1) MAINTENANCE OF A SATISFACTORY BALANCE OF CONCESSIONS IN TRADE AND SERVICES OVER THE LIFE OF THE AGREEMENT; AND

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(2) PRESIDENTIAL DETERMINATION THAT ACTUAL AND FORESEEABLE MTN CONCESSIONS BY THE US ARE RECIPROCATED.

U.S. SIDE EXPRESSED VIEW THAT DESPITE LIMIT ON DURATION, AGREEMENT COULD REFLECT PRESUMPTION THAT CONDITIONS (OTHER THAN THOSE OF JACKSON-VANIK) WILL BE MET AND AGREEMENT PERIODICALLY EXTENDED. U.S. SIDE NOTED THAT EXTENSION OF AGREEMENT BEYOND INITIAL THREE-YEAR PERIOD DOES NOT REQUIRE CONGRESSIONAL ACTION OR REVIEW. U.S. SIDE SAID THAT BOTH U.S. AND HUNGARY WOULD BE INTERESTED IN SATISFYING CONDITIONS OF BALANCE AND RECIPROCITY, AND THAT PROCEDURES FOR CONSULTATIONS UNDER GATT ARTICLES 22, 23, AND 28 AS WELL AS ARTICLE 7 OF THE HUNGARIAN PROTOCOL OF ACCESSION, COULD PROVIDE METHOD FOR ASSURING SATISFACTORY OPERATION OF BILATERAL AGREEMENT. IN U.S. VIEW, IT WOULD BE FEASIBLE TO USE THESE PROCEDURES EVEN WITHOUT DISINVOICATION OF ARTICLE 35. IN GENERAL, U.S. SIDE HELD THAT GAP BETWEEN U.S. LAW AND THE GATT IS NOT SO GREAT AS MAY AT FIRST APPEAR.

HUNGARIAN SIDE EXPRESSED PLEASURE WITH U.S. INTERPRETATION, BUT NOTED THAT CONGRESS COULD STILL INTERVENE IN THE PROCESS OF EVALUATION OF BALANCE AND RECIPROCITY UNDER A TRADE AGREEMENT, IF AGREEMENT WERE CONCLUDED PURSUANT TO SECTION 402(C) WAIVER. HUNGARIAN SIDE STRESSED THE NEED TO PRESERVE IN FULL THE CONSULTATION PROCEDURES OF HUNGARIAN PROTOCOL.

5. MARKET DISRUPTION: DIFFERENCE BETWEEN U.S. AND GATT CRITERIA FOR ESTABLISHING MARKET DISRUPTION EMERGED AS ESPECIALLY TRICKY PROBLEM. ARTICLE 5 OF HUNGARIAN PROTOCOL OF ACCESSION AUTHORIZES CONSULTATIONS AND POSSIBLE RELIEF ACTION IF RISING IMPORTS CONSTITUTE A CAUSE OR THREAT OF

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"SERIOUS INJURY TO DOMESTIC INDUSTRY. U.S. LAW APPLICABLE TO NONMARKET COUNTRIES (SECTION 406 OF THE TRADE ACT) DEFINES MARKET DISRUPTION AS RISE IN IMPORTS WHICH IS SIGNIFICANT CAUSE OR THREAT OF "MATERIAL" (I.E., LESS THAN SERIOUS) INJURY.

SECTION 406 ALSO PROVIDES SOMEWHAT BROADER AUTHORITY FOR EMERGENCY ACTION THAN DOES HUNGARIAN PROTOCOL, AND SETS TIME LIMIT ON CONSULTATIONS, WHICH PROTOCOL DOES NOT. BOTH PROTOCOL AND SECTION 406 PROVIDE FOR SELECTIVE (I.E., DISCRIMINATORY) RELIEF MEASURES. ARRANGEMENTS FOR SAFEGUARDS AGAINST MARKET DISRUPTION MUST BE PART OF A BILATERAL AGREEMENT UNDER SECTION 405.

HERE AS ELSEWHERE, HUNGARIAN SIDE INSISTED THAT IT COULD NOT PROVIDE US BILATERALLY WITH MORE FAVORABLE TERMS THAN IT ACCORDED OTHERS UNDER PROTOCOL, THE MORE SO BECAUSE HUNGARIAN ACCEPTANCE OF ARTICLE 5 OF PROTOCOL WAS CONCESSION IN EXCHANGE FOR EC PROMISE IN ARTICLE 4 TO ELIMINATE DISCRIMINATORY QRS. U.S. SIDE, HOWEVER, MUST HAVE LANGUAGE THAT PROTECTS FULL AUTHORITY FOR ACTION UNDER SECTION 406.

NYERGES ADMITTED THERE WAS LITTLE PRACTICAL DIFFERENCE BETWEEN "MATERIAL" AND "SERIOUS" INJURY, BECAUSE A PETITIONER WILL ALWAYS CLAIM ENOUGH INJURY TO WARRANT RELIEF, AND EXPORTER WILL CLAIM REVERSE. NEVERTHELESS, HE ARGUED THAT HE WOULD HAVE TO STAND ON HIS "LEGAL RIGHTS" UNDER THE PROTOCOL. HE ACCEPTED INTENT, BUT NOT WORDING, OF SAFEGUARD PROVISION OF US-ROMANIAN TRADE AGREEMENT, MODELED ON SECTIONS 405 AND 406. U.S. SIDE NOTED THERE HAD BEEN NO PETITIONS FILED UNDER 406, AND THAT ARBITRARILY RESTRICTIVE ACTION BY USG COULD BRING LITIGATION BY IMPORTERS. U.S. SIDE GAVE NYERGES PAPER ON PROCEDURES FOR HANDLING 406 CASES.

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AT FINAL MEETING, AFTER HAVING READ U.S. PAPER, NYERGES EXPRESSED CONCERN THAT SECTION 406 RISKED HARRASSMENT THROUGH PETITIONS "FROM ANYONE" OR THROUGH COURT CHALLENGES TO USG DECISION. U.S. SIDE REPLIED THAT USG COULD EXCLUDE FRIVOLOUS PETITIONS AND THAT ITC DECISIONS COULD NOT BE CHALLENGED IN COURT. MOREOVER, CONGRESS COULD CHALLENGE A PRESIDENTIAL DECISION ONLY TO THE EXTENT THAT IT DIFFERED FROM AN ITC RULING. NYERGES CONCLUDED THAT THE MAIN CONCERN TO HUNGARY WAS IMPOSITION IN U.S. LAW OF SEPARATE REGIMEN FOR COMMUNIST COUNTRIES, WHICH IF ACCEPTED BILATERALLY COULD WEAKEN HUNGARY'S POSITION AGAINST EC RESTRICTIONS.

6. U.S. SIDE NOTED THAT SECURITY-EXCEPTION PROVISION OF SECTION 405 IS SOMEWHAT BROADER THAN SIMILAR PROVISION IN GATT ARTICLE 21, BUT THIS DID NOT APPEAR TO PRESENT A SERIOUS PROBLEM FOR A TRADE AGREEMENT.

7. BUSINESS FACILITIES: NYERGES SEEMED UNCOMFORTABLE WITH SECTION 405 REQUIREMENT THAT BUSINESS FACILITIES BE TREATED IN BILATERAL TRADE AGREEMENT. U.S. SIDE NOTED STRONG INTEREST IN BUSINESS COMMUNITY IN THESE ISSUES AND GAVE NYERGES LIST OF TOPICS, DRAWN FROM US-ROMANIAN AGREEMENT, WHICH MIGHT BE COVERED. NYERGES SAID HE ACCEPTED "LEGITIMACY" OF U.S. PREOCCUPATION WITH THESE MATTERS, BUT NOTED THAT IN MANY AREAS HUNGARIAN GOVERNMENT HAS LITTLE RESPONSIBILITY FOR ACTIVITIES OF HUNGARIAN FIRMS. HE AGREED TO EXAMINE ALL ITEMS.

8. MULTILATERAL TRADE NEGOTIATIONS: US SIDE REVIEWED US THINKING ON MAIN MTN ISSUES: AGRICULTURE, TARIFFS, SUBSIDIES/COUNTVAILING DUTIES, GOVERNMENT PROCUREMENT, STANDARDS, CUSTOMS VALUATION, LDC ISSUES, SUPPLY ACCESS, CONFIDENTIAL  
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GATT REFORM, DISPUTE SETTLEMENT, AND TIMING OF NEGOTIATIONS. NYERGES RESPONDED ON EACH OF THESE, NOTING THAT IN MANY AREAS, SUCH AS AGRICULTURE, INTERESTS OF HUNGARY AND US COINCIDE. HE STRESSED THAT IN MTN, EASTERN EUROPEANS DO NOT ACT AS BLOC EXCEPT ON MATTERS OF PRINCIPLE. U.S. SHOULD THEREFORE AVOID TREATING STATE-TRADING COUNTRIES AS BLOC, LEST THEY BE FORCED TO BEHAVE AS ONE.

TARIFF ISSUE ESPECIALLY DIFFICULT FOR HUNGARY. NYERGES SAID HUNGARIAN MINISTRY OF FINANCE OPPOSED CUTS, WHILE MINISTRY OF FOREIGN TRADE WANTED DEEP FORMULA CUTS TO REDUCE SIGNIFICANCE OF EC PREFERENCES. HE SHOWED LITTLE WILLINGNESS TO COMPROMISE WITH EC ON AGRICULTURAL TARIFFS.

NYERGES STRESSED HUNGARY'S COMMITMENT TO MTN. ON SEVERAL OCCASIONS, HE REFERRED TO COMMUNITY'S DESIRE FOR BILATERAL TALKS IN "DARK STREETS" OF BRUSSELS, RATHER THAN IN "BRIGHT LIGHTS" OF GENEVA. HE CONTENDED THAT HUNGARY, AS SMALL COUNTRY, MUST DEAL IN MULTILATERAL FORUM OR LOSE BARGAINING POWER.

9. FREE-TRADE AGREEMENTS: NYERGES RAISED QUESTION OF FINNISH-HUNGARIAN FTA, CLAIMING IT WAS DESIGNED TO REDUCE TRADE DISTORTIONS CAUSED BY EC ARRANGEMENTS WITH FINLAND. HE SAID HUNGARY HAS APPROACHED AUSTRIA ABOUT SIMILAR AGREEMENT. U.S. SIDE RESPONDED SHARPLY, CITING POTENTIAL DISCRIMINATION AGAINST US, AND NOTING THAT POSITION OF FINLAND AND AUSTRIA SHARED BY NORWAY, SWEDEN, AND SWITZERLAND. U.S. SAW SOLUTION IN GENERAL REDUCTION OF TRADE

BARRIERS, NOT IN PROLIFERATION OF FTAS.

10. WE INFORMED ONLY A FEW KEY CONGRESSIONAL STAFF MEMBERS  
OF THE TALKS AND LIMITED THE U.S. DELEGATION TO REPRESENTATIVES OF STATE, STR, COMMERCE AND TREASURY. STATE

REPRESENTATIVES INCLUDED MARK LINTON, NEWLY ASSIGNED  
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ECONOMIC OFFICER IN BUDAPEST. SO FAR THE TALKS HAVE  
RECEIVED NO PUBLICITY.

11. NEXT STEPS: NYERGES AGREED TO CONTINUE DISCUSSIONS  
WITH U.S. REPS DURING GROUP OF 18 MEETING IN GENEVA IN  
JULY. ON QRS, HE WAS GIVEN NAME OF DOUGLAS NEWKIRK OF  
MTN DELEGATION, TO EXPLORE POSSIBILITY OF SUPPORTING U.S.  
PROPOSAL FOR MULTILATERAL SOLUTION. VANCE

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## Message Attributes

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